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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

February 12, 2009

Elizabeth Warren  
Chair, Congressional Oversight Panel  
732 North Capitol St., N.W.  
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Washington, D.C. 20401

Dear Professor Warren:

I read with interest the “Special Report on Regulatory Reform,” recently issued by the Congressional Oversight Panel and the Report’s discussion and recommendations concerning the issue of federal preemption of state consumer protection laws, particularly in the context of national banks. I am concerned that the Report’s discussion supporting those recommendations is incomplete and creates inaccurate impressions that do not provide a full or balanced background against which to weigh the Report’s recommendations.

My concern arises in several respects. First, the Report suggests that the doctrine of federal preemption applicable to national banks, whereby national banks are generally subject to standards set under federal, but not state law, results in state regulation producing more robust consumer protection standards than are applicable to national banks. The Report does not reconcile this suggestion with the fact – which the Report mentions only in passing – that the overwhelming preponderance of toxic subprime mortgages were originated by companies subject only to state regulation. A variety of studies and commentaries are available on the relative effectiveness of federal and state regulators in the current mortgage crisis, but they are not discussed or cited in the Report. For example, for your reference I enclose a brief analysis prepared by OCC staff from a well-known source of mortgage loan data, identifying the 10 mortgage originators with the highest number of subprime and Alt-A mortgage foreclosures – in the 10 metropolitan statistical areas (MSAs) experiencing the highest foreclosure rates in the period 2005-2007. Of the 21 firms comprising the “worst 10” in those 10 MSAs, 12 firms – accounting for nearly 60 percent of non-prime mortgage loans and foreclosures – were exclusively supervised by the states. Nor does the Report even reference the many, many federal consumer protection laws, rules, and supervisory guidance applicable to national banks.<sup>1</sup>

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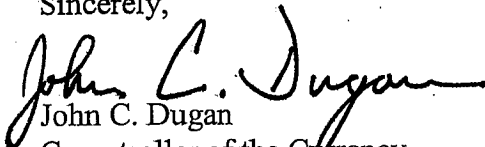
<sup>1</sup> For example, a detailed description of the OCC’s supervision of national banks’ consumer business appears in testimony I gave before the House Financial Services Committee in 2007. *See* Testimony of John C. Dugan Before the Committee on Financial Services of the U.S. House of Representatives,” June 13, 2007, available on OCC’s website at [www.occ.gov/ftp/release/2007-57b.pdf](http://www.occ.gov/ftp/release/2007-57b.pdf).

Second, the Report suggests that federal preemption acted as a deterrent to robust state consumer protection regulation because some states were concerned that, if they imposed robust regulation, it would drive state-regulated firms to convert to federal charters. Frankly, this suggestion is not credible. States had and have exclusive responsibility for regulating nonbank mortgage lenders and brokers; federal laws regulating national banks do not in any way preempt this state responsibility. At the same time, national banks were not principal participants in the market for subprime loans, especially in their most aggressive, toxic form; instead, the market leaders for these products were nonbank brokers and lenders regulated exclusively by the states. In this context, it is not plausible to argue that state-regulated entities were aggressively providing subprime loans because of a need to keep pace with preemption-protected national banks – because national banks were not the principal providers of such loans. Moreover, the notion that nonbank brokers and lenders would convert to federal charters to escape any effort by states to regulate them more stringently is also not plausible: these entities were not FDIC-insured banks, and therefore, they could not have simply “converted” to national banks (or federal thrifts). In short, solving the problems in mortgage markets identified in the Report is critical, but the suggestion that the origins or duration of these problems lay in federal preemption is simply inaccurate.

The Report also attributes a weakening of consumer protections at the state level to an erosion of state usury statutes traceable to a 1978 Supreme Court decision involving a national bank. This case construed a provision of the National Bank Act, holding that a national bank could charge to customers nationwide the interest rate permitted by the state where it is located.<sup>2</sup> The Report implies that this approach is a unique preemption of state law available to national banks. It is not. State banks have the same treatment under the Federal Deposit Insurance Act, as do federal thrifts under the Home Owners’ Loan Act. In other words, Congress has determined that each type of depository institution may charge interest at the rate allowed by the state where the institution is located. This context is important for a reader of the Report to understand.

As the Congress considers changes in law and policy to remedy present problems, it is essential to provide a complete and objective analysis that permits readers to reach their own conclusions on a fully informed basis.

Sincerely,

  
John C. Dugan  
Comptroller of the Currency

Enclosure

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<sup>2</sup> 12 U.S.C. § 85 (national banks authorized to charge interest at the rate allowed by the state “where the bank is located”); *Marquette National Bank v. First of Omaha Service Corporation*, 439 U.S. 299 (1978).

cc: Rep. Jeb Hensarling  
Mr. Richard Neiman  
Mr. Damon A. Silvers  
Sen. John E. Sununu

## Worst Ten in the Worst Ten

- The table below sets forth the ten metropolitan areas experiencing the highest rates of foreclosure as reported by RealtyTrac (the "Worst Ten" MSAs). Foreclosure rates for sub-prime and Alt-A mortgages originated from 2005 through 2007 in these MSAs were computed using data from Loan Performance.

Rank	MSA	Non-prime Mortgage Foreclosure Rate
1	Detroit	22.9%
2	Cleveland	21.6%
3	Stockton	21.5%
4	Sacramento	18.0%
5	Riverside/San Bernardino	16.1%
6	Memphis	15.6%
7	Miami/Fort Lauderdale	14.3%
8	Bakersfield	14.3%
9	Denver	14.0%
10	Las Vegas	13.9%

- For each of these metro areas, the "Worst Ten" originators were identified: the ten originators in each MSA with the largest number of non-prime mortgage foreclosures in the Loan Performance database for 2005-2007 originations.
- Only 21 companies in various combinations (see attached tables for MSA-level details) occupy the Worst Ten slots in the Worst Ten metro areas:

AEGIS FUNDING CORPORATION  
 AMERICAN HOME MORTGAGE CORP.  
 AMERIQUEST MORTGAGE COMPANY  
 ARGENT MORTGAGE COMPANY  
 BNC MORTGAGE  
 COUNTRYWIDE  
 DECISION ONE MORTGAGE  
 DELTA FUNDING CORPORATION  
 FIELDSTONE MORTGAGE COMPANY  
 FIRST FRANKLIN CORPORATION  
 FREMONT INVESTMENT & LOAN

GREENPOINT MORTGAGE FUNDING  
 INDYMAC BANK, F.S.B.  
 LONG BEACH MORTGAGE CO.  
 NEW CENTURY MORTGAGE  
 OPTION ONE MORTGAGE CORP  
 OWNIT MORTGAGE SOLUTIONS INC.  
 PEOPLE'S CHOICE FINANCIAL CORP  
 RESMAE MORTGAGE CORPORATION  
 WELLS FARGO  
 WMC MORTGAGE CORP.

- Of these 21 firms, 12 were exclusively supervised by the states; overall, such originators accounted for nearly 60 percent of non-prime mortgage loans and foreclosures in the Worst Ten metro areas in 2005-2007.
- Only three firms on the list were subject to OCC supervision during 2005-2007, and those three accounted for fewer than 12 percent of foreclosures in the Worst Ten metro areas.
- Results for the U.S. as a whole are similar to those for the Worst Ten metropolitan areas. OCC-supervised institutions accounted for approximately 12 to 14 percent of the non-prime originations; moreover, foreclosure rates for OCC-supervised institutions were markedly lower on average than for other types of originators.

# **Worst Ten in the Worst Ten:** Results for individual metropolitan areas

## **Bakersfield**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	WMC MORTGAGE CORP.	731	3998	18.3%
2	LONG BEACH MORTGAGE CO.	680	2817	24.1%
3	NEW CENTURY MORTGAGE	647	3864	16.7%
4	OPTION ONE MORTGAGE CORP	302	1673	18.1%
5	ARGENT MORTGAGE COMPANY	276	1527	18.1%
6	OWNIT MORTGAGE SOLUTIONS INC.	232	1059	21.7%
7	FREMONT INVESTMENT & LOAN	207	1286	16.1%
8	FIRST FRANKLIN CORPORATION	206	1186	17.4%
9	AMERIQUEST MORTGAGE COMPANY	124	1002	12.4%
10	COUNTRYWIDE	105	1232	8.6%

## **Memphis**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	LONG BEACH MORTGAGE CO.	669	1853	36.1%
2	WMC MORTGAGE CORP.	376	2141	17.6%
3	FIRST FRANKLIN CORPORATION	355	3290	10.8%
4	OPTION ONE MORTGAGE CORP	300	1224	24.5%
5	NEW CENTURY MORTGAGE	295	1705	17.3%
6	WELLS FARGO	202	1249	16.2%
7	AMERIQUEST MORTGAGE COMPANY	184	900	20.4%
8	ARGENT MORTGAGE COMPANY	159	536	29.7%
9	DECISION ONE MORTGAGE	119	518	23.0%
10	FREMONT INVESTMENT & LOAN	92	393	23.4%

## **Cleveland**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	ARGENT MORTGAGE COMPANY	1327	3251	40.8%
2	NEW CENTURY MORTGAGE	912	2437	37.4%
3	LONG BEACH MORTGAGE CO.	525	968	54.2%
4	FIRST FRANKLIN CORPORATION	425	2332	18.2%
5	AEGIS FUNDING CORPORATION	412	1276	32.3%
6	OPTION ONE MORTGAGE CORP	370	1538	24.1%
7	AMERIQUEST MORTGAGE COMPANY	245	1166	21.0%
8	WELLS FARGO	239	1275	18.7%
9	PEOPLE'S CHOICE FINANCIAL CORP	217	550	39.5%
10	DELTA FUNDING CORPORATION	155	570	27.2%

## **Miami**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	FREMONT INVESTMENT & LOAN	1655	8961	18.5%
2	ARGENT MORTGAGE COMPANY	1383	8967	15.4%
3	LONG BEACH MORTGAGE CO.	1176	5255	22.4%
4	WMC MORTGAGE CORP.	1168	5861	19.9%
5	NEW CENTURY MORTGAGE	1018	7456	13.7%
6	OPTION ONE MORTGAGE CORP	883	4637	19.0%
7	FIRST FRANKLIN CORPORATION	777	3946	19.7%
8	AMERIQUEST MORTGAGE COMPANY	538	4002	13.4%
9	AMERICAN HOME MORTGAGE CORP.	508	4114	12.3%
10	COUNTRYWIDE	504	5568	9.1%

## **Denver**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	LONG BEACH MORTGAGE CO.	758	2570	29.5%
2	NEW CENTURY MORTGAGE	703	3585	19.6%
3	ARGENT MORTGAGE COMPANY	670	1737	38.6%
4	FREMONT INVESTMENT & LOAN	670	3129	21.4%
5	OPTION ONE MORTGAGE CORP	613	2770	22.1%
6	FIRST FRANKLIN CORPORATION	533	3325	16.0%
7	OWNIT MORTGAGE SOLUTIONS INC.	404	2292	17.6%
8	AMERIQUEST MORTGAGE COMPANY	293	1173	25.0%
9	FIELDSTONE MORTGAGE COMPANY	275	991	28.6%
10	WMC MORTGAGE CORP.	260	1099	23.7%

## **Riverside**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	NEW CENTURY MORTGAGE	4600	22736	20.2%
2	WMC MORTGAGE CORP.	4577	21191	21.6%
3	FREMONT INVESTMENT & LOAN	2380	11584	20.5%
4	LONG BEACH MORTGAGE CO.	2374	7608	31.2%
5	FIRST FRANKLIN CORPORATION	2301	10701	21.5%
6	ARGENT MORTGAGE COMPANY	2175	9138	23.8%
7	OPTION ONE MORTGAGE CORP	2175	10752	20.2%
8	RESMAE MORTGAGE CORPORATION	1717	5763	29.8%
9	COUNTRYWIDE	1304	13280	9.8%
10	BNC MORTGAGE	876	3591	24.4%

## **Detroit**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	ARGENT MORTGAGE COMPANY	2532	5582	45.4%
2	LONG BEACH MORTGAGE CO.	1956	3816	51.3%
3	NEW CENTURY MORTGAGE	1894	6376	29.7%
4	OPTION ONE MORTGAGE CORP	1757	5780	30.4%
5	FIRST FRANKLIN CORPORATION	1578	7733	20.4%
6	FREMONT INVESTMENT & LOAN	1308	3583	36.5%
7	AMERIQUEST MORTGAGE COMPANY	910	3347	27.2%
8	WELLS FARGO	671	2621	25.6%
9	AMERICAN HOME MORTGAGE CORP.	518	3365	15.4%
10	PEOPLE'S CHOICE FINANCIAL CORP	479	1284	37.3%

## **Sacramento**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	LONG BEACH MORTGAGE CO.	1997	4836	41.3%
2	NEW CENTURY MORTGAGE	1510	5878	25.7%
3	WMC MORTGAGE CORP.	1155	4082	28.3%
4	FREMONT INVESTMENT & LOAN	889	3444	25.8%
5	OPTION ONE MORTGAGE CORP	886	3518	25.2%
6	ARGENT MORTGAGE COMPANY	637	2067	30.8%
7	FIRST FRANKLIN CORPORATION	626	2686	23.3%
8	COUNTRYWIDE	565	4697	12.0%
9	GREENPOINT MORTGAGE FUNDING	535	4101	13.0%
10	RESMAE MORTGAGE CORPORATION	460	1472	31.3%

## **Las Vegas**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	NEW CENTURY MORTGAGE	1671	8623	19.4%
2	ARGENT MORTGAGE COMPANY	1093	4598	23.8%
3	WMC MORTGAGE CORP.	999	4886	20.4%
4	COUNTRYWIDE	957	9638	9.9%
5	FIRST FRANKLIN CORPORATION	945	4743	19.9%
6	FREMONT INVESTMENT & LOAN	879	4174	21.1%
7	OPTION ONE MORTGAGE CORP	696	3710	18.8%
8	AMERICAN HOME MORTGAGE CORP.	489	4904	10.0%
9	GREENPOINT MORTGAGE FUNDING	468	4963	9.4%
10	INDYMAC BANK, F.S.B.	423	4288	9.9%

## **Stockton**

Rank	Originator	Foreclosure Starts	Originations	Foreclosure Rate
1	LONG BEACH MORTGAGE CO.	1213	3056	39.7%
2	NEW CENTURY MORTGAGE	870	3263	26.7%
3	WMC MORTGAGE CORP.	677	2259	30.0%
4	ARGENT MORTGAGE COMPANY	476	1402	34.0%
5	FREMONT INVESTMENT & LOAN	466	1762	26.4%
6	OPTION ONE MORTGAGE CORP	382	1448	25.0%
7	GREENPOINT MORTGAGE FUNDING	343	1978	17.3%
8	FIRST FRANKLIN CORPORATION	291	1046	27.8%
9	COUNTRYWIDE	263	1931	13.6%
10	AMERIQUEST MORTGAGE COMPANY	217	920	23.6%

## Worst Ten in the Worst Ten: Supervisory Status of Mortgage Originators

Originator	Supervisor	Foreclosures in Worst 10 Metro Areas, based on 2005-07 Originations
New Century Mortgage Corp.	State supervised. Subsidiary of publicly-traded REIT, filed for bankruptcy in early 2007.	14,120
Long Beach Mortgage Co.	State and OTS supervised. Affiliate of WAMU, became a subsidiary of thrift in early 2006; closed in late 2007 / early 2008.	11,736
Argent Mortgage Co.	State supervised until Citigroup acquired certain assets of Argent in 08/07. Merged into CitiMortgage (NB opsub) shortly thereafter.	10,728
WMC Mortgage Corp.	State supervised. Subsidiary of General Electric, closed in late 2007.	10,283
Fremont Investment & Loan	FDIC supervised. California state chartered industrial bank. Liquidated, terminated deposit insurance, and surrendered charter in 2008.	8,635
Option One Mortgage Corp.	State supervised. Subsidiary of H&R Block, closed in late 2007.	8,344
First Franklin Corp.	OCC supervised. Subsidiary of National City Bank until 12/06. Sold to Merrill Lynch, closed in 2008.	8,037
Countrywide	Data includes loans originated by (1) Countrywide Home Loans, an FRB supervised entity until 03/07, and an OTS supervised entity after 03/07; and (2) Countrywide Bank, an OCC supervised entity until 03/07, and an OTS supervised entity after 03/07.	4,736
Ameriquest Mortgage Co.	State supervised. Citigroup acquired certain assets of Ameriquest in 08/07. Merged into CitiMortgage (NB opsub) shortly thereafter.	4,126
ResMae Mortgage Corp.	State supervised. Filed for bankruptcy in late 2007.	3,558
American Home Mortgage Corp.	State supervised. Filed for bankruptcy in 2007.	2,954
IndyMac Bank, FSB	OTS supervised thrift. Closed in July 2008.	2,882
Greenpoint Mortgage Funding	FDIC supervised. Acquired by Capital One, NA, in mid 2007 as part of conversion and merger with North Fork, a state bank. Closed immediately thereafter in 08/07.	2,815
Wells Fargo	Data includes loans originated by (1) Wells Fargo Financial, Inc., an FRB supervised entity, and (2) Wells Fargo Bank, an OCC supervised entity.	2,697
Ownit Mortgage Solutions, Inc.	State supervised. Closed in late 2006.	2,533
Aegis Funding Corp.	State supervised. Filed for bankruptcy in late 2007.	2,058
People's Choice Financial Corp.	State supervised. Filed for bankruptcy in early 2008.	1,783
BNC Mortgage	State and OTS supervised. Subsidiary of Lehman Brothers (S&L holding company), closed in August 2007.	1,769
Fieldstone Mortgage Co.	State supervised. Filed for bankruptcy in late 2007.	1,561
Decision One Mortgage	State and FRB supervised. Subsidiary of HSBC Finance Corp. Closed in late 2007.	1,267
Delta Funding Corp.	State supervised. Filed for bankruptcy in late 2007.	598

Thursday, November 13, 2008